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**UNITED STATES DISTRICT COURT
NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA,) Criminal Case No. 08-00016
Plaintiff,)
v.)
LARRY BORJA HOCOG,)
Defendant.)

)

**GOVERNMENT'S PROPOSED
JURY INSTRUCTIONS**

Trial: July 7, 2008
Time: 9:00 a.m.
Judge: Hon. Alex R. Munson

The United States of America, by and through its undersigned attorneys, hereby submits the attached proposed Jury Instructions, reserving the right to amend such instructions if necessary.

LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and the NMI

Date: 6/30/08

By: _____/s/
ERIC S. O'MALLEY
Assistant United States Attorney

1 **1. FUNCTION OF JURY**

2 MEMBERS OF THE JURY, NOW THAT YOU HAVE HEARD ALL OF THE
3 EVIDENCE, IT IS MY DUTY TO INSTRUCT YOU ON THE LAW WHICH APPLIES TO
4 THIS CASE. A COPY OF THESE INSTRUCTIONS WILL BE AVAILABLE IN THE JURY
5 ROOM FOR YOU TO CONSULT.

6 IT IS YOUR DUTY TO FIND THE FACTS FROM ALL OF THE EVIDENCE
7 IN THE CASE. TO THOSE FACTS, YOU WILL APPLY THE LAW AS I GIVE IT TO YOU.
8 YOU MUST FOLLOW THE LAW AS I GIVE IT TO YOU WHETHER YOU AGREE WITH IT
9 OR NOT. YOU MUST NOT BE INFLUENCED BY ANY PERSONAL LIKES OR DISLIKES,
10 OPINIONS, PREJUDICES, OR SYMPATHIES. THAT MEANS THAT YOU MUST DECIDE
11 THE CASE SOLELY ON THE EVIDENCE BEFORE YOU. YOU WILL RECALL THAT
12 YOU TOOK AN OATH PROMISING TO DO SO AT THE BEGINNING OF THE CASE.

13 IN FOLLOWING MY INSTRUCTIONS, YOU MUST FOLLOW ALL OF
14 THEM, AND NOT SINGLE OUT SOME AND IGNORE OTHERS; THEY ARE ALL
15 EQUALLY IMPORTANT. YOU MUST NOT READ INTO THESE INSTRUCTIONS, OR
16 INTO ANYTHING THE COURT MAY HAVE SAID OR DONE, ANY SUGGESTION AS TO
17 WHAT VERDICT YOU SHOULD RETURN -- THAT IS A MATTER ENTIRELY UP TO
18 YOU.

1 2. **THE UNITED STATES AS A PARTY**

2 YOU ARE TO PERFORM THE DUTY OF FINDING THE FACTS WITHOUT BIAS
3 OR PREJUDICE AS TO ANY PARTY. YOU ARE TO PERFORM YOUR FINAL DUTY IN
4 AN ATTITUDE OF COMPLETE FAIRNESS AND IMPARTIALITY. THE CASE IS
5 IMPORTANT TO THE GOVERNMENT BECAUSE THE ENFORCEMENT OF CRIMINAL
6 LAWS IS A MATTER OF PRIME IMPORTANCE TO THE COMMUNITY. EQUALLY, IT IS
7 IMPORTANT TO THE DEFENDANT WHO IS CHARGED WITH SERIOUS CRIMES. THE
8 FACT THAT THE PROSECUTION IS BROUGHT IN THE NAME OF THE UNITED STATES
9 OF AMERICA ENTITLES THE GOVERNMENT TO NO GREATER CONSIDERATION
10 THAN THAT ACCORDED TO ANY OTHER PARTY TO A CASE. BY THE SAME TOKEN,
11 IT IS ENTITLED TO NO LESS CONSIDERATION. ALL PARTIES, WHETHER THE
12 GOVERNMENT OR INDIVIDUALS, STAND AS EQUALS AT THE BAR OF JUSTICE.

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1 3. **INDICTMENT IS NOT EVIDENCE**

2 THE INDICTMENT IS NOT EVIDENCE. THE DEFENDANT HAS PLEADED NOT
3 GUILTY TO THE CHARGES. THE DEFENDANT IS PRESUMED TO BE INNOCENT AND
4 DOES NOT HAVE TO TESTIFY OR PRESENT ANY EVIDENCE TO PROVE HIS
5 INNOCENCE. THE GOVERNMENT HAS THE BURDEN OF PROVING EVERY ELEMENT
6 OF THE CHARGES BEYOND A REASONABLE DOUBT.

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1 4. **RIGHT NOT TO TESTIFY**

2 A DEFENDANT IN A CRIMINAL CASE HAS A CONSTITUTIONAL RIGHT NOT
3 TO TESTIFY. NO PRESUMPTION OF GUILT MAY BE RAISED, AND NO INFERENCE OF
4 ANY KIND MAY BE DRAWN, FROM THE FACT THAT THE DEFENDANT DID NOT
5 TESTIFY.

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1 **5. PRESUMPTION OF INNOCENCE**

2 AS I TOLD YOU AT THE OUTSET OF THE TRIAL, THIS IS A CRIMINAL CASE
3 IN WHICH THE DEFENDANT IS CHARGED WITH VIOLATING CERTAIN LAWS OF THE
4 UNITED STATES. THE CHARGES, HOWEVER, ARE ONLY ALLEGATIONS. THE
5 DEFENDANT IS PRESUMED TO BE INNOCENT OF THOSE CHARGES UNLESS AND
6 UNTIL YOU, THE JURY, FIND BEYOND A REASONABLE DOUBT THAT THE
7 DEFENDANT IS GUILTY OF ANY OFFENSE ALLEGED IN THE INDICTMENT.

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1 **6. BURDEN OF PROOF**

2 IN A CRIMINAL CASE, THE GOVERNMENT ALWAYS HAS THE BURDEN OF
3 PROOF. TO OVERCOME THE PRESUMPTION OF INNOCENCE AND PROVE THE
4 DEFENDANT GUILTY OF AN OFFENSE, THE GOVERNMENT MUST PROVE BEYOND A
5 REASONABLE DOUBT EACH AND EVERY ELEMENT OF THAT OFFENSE AS
6 CHARGED IN THE INDICTMENT.

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1 7. **REASONABLE DOUBT**

2 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
3 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY. IT IS NOT REQUIRED
4 THAT THE GOVERNMENT PROVE GUILT BEYOND ALL POSSIBLE DOUBT.

5 A REASONABLE DOUBT IS A DOUBT BASED UPON REASON AND COMMON
6 SENSE AND IS NOT BASED PURELY ON SPECULATION. IT MAY ARISE FROM A
7 CAREFUL AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE, OR FROM A
8 LACK OF EVIDENCE.

9 IF, AFTER A CAREFUL AND IMPARTIAL CONSIDERATION OF ALL THE
10 EVIDENCE, YOU ARE NOT CONVINCED BEYOND A REASONABLE DOUBT THAT THE
11 DEFENDANT IS GUILTY, IT IS YOUR DUTY TO FIND THE DEFENDANT NOT GUILTY.
12 ON THE OTHER HAND, IF AFTER A CAREFUL AND IMPARTIAL CONSIDERATION OF
13 ALL THE EVIDENCE, YOU ARE CONVINCED BEYOND A REASONABLE DOUBT THAT
14 THE DEFENDANT IS GUILTY, IT IS YOUR DUTY TO FIND THE DEFENDANT GUILTY.

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1 **8. EVIDENCE: WHAT IS EVIDENCE**

2 THE EVIDENCE FROM WHICH YOU ARE TO DECIDE THE FACTS OF THIS
3 CASE ARE:

- 4 1. THE SWORN TESTIMONY OF ANY WITNESS;
5 2. THE EXHIBITS WHICH HAVE BEEN RECEIVED INTO EVIDENCE;
6 3. ANY FACTS TO WHICH THE LAWYERS HAVE STIPULATED; AND
7 4. ANY FACTS OF WHICH THE COURT HAS TAKEN JUDICIAL NOTICE.

1 9. EVIDENCE: WHAT IS NOT EVIDENCE

2 IN REACHING YOUR VERDICT, YOU MAY CONSIDER ONLY THE EVIDENCE
3 THAT THE COURT HAS RECEIVED, THAT IS, THE TESTIMONY, EXHIBITS, AND ANY
4 STIPULATIONS. CERTAIN THINGS, HOWEVER, ARE NOT EVIDENCE AND YOU MAY
5 NOT CONSIDER THEM IN DECIDING THE FACTS. I WILL LIST THEM FOR YOU:

6 1. ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT EVIDENCE.
7 THE LAWYERS ARE NOT WITNESSES. WHAT THEY SAY IN THEIR OPENING OR
8 CLOSING STATEMENTS, AND AT OTHER TIMES, IS INTENDED TO HELP YOU
9 INTERPRET THE EVIDENCE, BUT IT IS NOT EVIDENCE. IF THE FACTS AS YOU
10 REMEMBER THEM DIFFER FROM THE WAY THE LAWYERS STATE THEM, YOUR
11 MEMORY OF THEM CONTROLS.

12 2. QUESTIONS AND OBJECTIONS BY LAWYERS ARE NOT
13 EVIDENCE. ATTORNEYS HAVE A DUTY TO THEIR CLIENTS TO OBJECT WHEN
14 THEY BELIEVE A QUESTION IS IMPROPER UNDER THE RULES OF EVIDENCE. YOU
15 SHOULD NOT BE INFLUENCED BY THE QUESTION, THE OBJECTION, OR THE
16 COURT'S RULING ON IT.

17 3. TESTIMONY THAT HAS BEEN EXCLUDED OR STRICKEN, OR THAT YOU
18 HAVE BEEN INSTRUCTED TO DISREGARD, IS NOT EVIDENCE AND MUST NOT BE
19 CONSIDERED. IN ADDITION, SOME TESTIMONY AND EXHIBITS MAY HAVE BEEN
20 RECEIVED ONLY FOR A LIMITED PURPOSE; WHERE I HAVE GIVEN A LIMITING
21 INSTRUCTION, YOU MUST FOLLOW IT.

22 4. ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN THE COURT WAS
23 NOT IN SESSION IS NOT EVIDENCE. YOU ARE TO DECIDE THE CASE SOLELY ON
24 THE EVIDENCE RECEIVED AT THE TRIAL.

1 **10. EVIDENCE: DIRECT AND CIRCUMSTANTIAL**

2 THERE ARE TWO KINDS OF EVIDENCE, DIRECT AND CIRCUMSTANTIAL.
3 DIRECT EVIDENCE IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY OF AN
4 EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE, THAT IS,
5 PROOF OF A CHAIN OF FACTS FROM WHICH YOU COULD FIND THAT ANOTHER
6 FACT EXISTS, EVEN THOUGH IT HAS NOT BEEN PROVED DIRECTLY. YOU ARE TO
7 CONSIDER BOTH KINDS OF EVIDENCE. THE LAW PERMITS YOU TO GIVE EQUAL
8 WEIGHT TO BOTH, BUT IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE TO
9 ANY EVIDENCE.

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1 **11. CONSIDERATION OF THE EVIDENCE**

2 IN DECIDING THE FACTS IN THIS CASE, YOU MAY HAVE TO DECIDE WHICH
3 TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE. YOU MAY
4 BELIEVE EVERYTHING A WITNESS SAYS, OR PART OF IT, OR NONE OF IT.

5 IN CONSIDERING THE TESTIMONY OF ANY WITNESS, YOU MAY TAKE INTO
6 ACCOUNT:

- 7 1. THE OPPORTUNITY AND ABILITY OF THE WITNESS TO SEE OR HEAR
8 OR KNOW THE THINGS THEY TESTIFIED TO;
- 9 2. THE WITNESS' MEMORY;
- 10 3. THE WITNESS' MANNER WHILE TESTIFYING;
- 11 4. THE WITNESS' INTEREST IN THE OUTCOME OF THE CASE AND ANY
12 BIAS OR PREJUDICE;
- 13 5. WHETHER OTHER EVIDENCE CONTRADICTED THE WITNESS'
14 TESTIMONY;
- 15 6. THE REASONABLENESS OF THE WITNESS' TESTIMONY IN LIGHT OF
16 ALL THE EVIDENCE; AND
- 17 7. ANY OTHER FACTORS THAT BEAR ON BELIEVABILITY.

18 THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT NECESSARILY
19 DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY.

1 **12. EVIDENCE: STATEMENTS BY THE DEFENDANT**

2 YOU HAVE HEARD TESTIMONY THAT THE DEFENDANT MADE CERTAIN
3 STATEMENTS. IT IS FOR YOU TO DECIDE:

- 4 1. WHETHER THE DEFENDANT MADE ANY STATEMENT; AND
5 2. IF SO, HOW MUCH WEIGHT TO GIVE IT.

6 IN MAKING THOSE DECISIONS, YOU SHOULD CONSIDER ALL OF THE
7 EVIDENCE ABOUT THE STATEMENT, INCLUDING THE CIRCUMSTANCES UNDER
8 WHICH IT MAY HAVE BEEN MADE.

1 **13. TRIAL ON CHARGES IN THE INDICTMENT**

2 THE DEFENDANT IS ON TRIAL ONLY FOR THE CRIMES CHARGED IN THE
3 INDICTMENT, NOT FOR ANY OTHER ACTIVITIES. YOUR DETERMINATION MUST BE
4 MADE ONLY FROM THE EVIDENCE IN THE CASE. YOU SHOULD CONSIDER
5 EVIDENCE ABOUT THE ACTS, STATEMENTS, AND INTENTIONS OF OTHERS, OR
6 EVIDENCE ABOUT OTHER ACTS OF THE DEFENDANT, ONLY AS THEY RELATE TO
7 THESE CHARGES AGAINST THIS DEFENDANT.

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1 14. **COUNT ONE—ILLEGAL DISTRIBUTION OF OXYCODONE**
2 **HYDROCHLORIDE: ELEMENTS OF THE OFFENSE**

3 THE DEFENDANT IS CHARGED IN COUNT ONE OF THE INDICTMENT WITH
4 KNOWINGLY AND INTENTIONALLY DISTRIBUTING OXYCODONE
5 HYDROCHLORIDE, A SCHEDULE II CONTROLLED SUBSTANCE, WITHOUT PROPER
6 CERTIFICATION FROM THE U.S. DRUG ENFORCEMENT ADMINISTRATION. IN
7 ORDER FOR YOU TO FIND THE DEFENDANT GUILTY OF THIS CHARGE, THE
8 GOVERNMENT MUST PROVE EACH OF THE FOLLOWING ELEMENTS BEYOND A
9 REASONABLE DOUBT:

10 *FIRST, THE DEFENDANT KNOWINGLY AND INTENTIONALLY DISTRIBUTED OR*
11 *DISPENSED OXYCODONE HYDROCHLORIDE, A SCHEDULE II CONTROLLED*
12 *SUBSTANCE; AND*

13 *SECOND, THE DEFENDANT WAS NOT AUTHORIZED BY THE UNITED STATES*
14 *DRUG ENFORCEMENT ADMINISTRATION TO DISTRIBUTE SCHEDULE II*
15 *CONTROLLED SUBSTANCES.*

1 15. **COUNT TWO—ILLEGAL DISTRIBUTION OF MEPERIDINE: ELEMENTS OF**
2 **THE OFFENSE**

3 THE DEFENDANT IS CHARGED IN COUNT TWO OF THE INDICTMENT WITH
4 KNOWINGLY AND INTENTIONALLY DISTRIBUTING MEPERIDINE, A SCHEDULE II
5 CONTROLLED SUBSTANCE, WITHOUT PROPER CERTIFICATION FROM THE U.S.
6 DRUG ENFORCEMENT ADMINISTRATION. IN ORDER FOR YOU TO FIND THE
7 DEFENDANT GUILTY OF THIS CHARGE, THE GOVERNMENT MUST PROVE EACH OF
8 THE FOLLOWING ELEMENTS BEYOND A REASONABLE DOUBT:

9 *FIRST, THE DEFENDANT KNOWINGLY AND INTENTIONALLY DISTRIBUTED OR*
DISPENSED MEPERIDINE, A SCHEDULE II CONTROLLED SUBSTANCE; AND

10 *SECOND, THE DEFENDANT WAS NOT AUTHORIZED BY THE UNITED STATES*
DRUG ENFORCEMENT ADMINISTRATION TO DISTRIBUTE SCHEDULE II
CONTROLLED SUBSTANCES.

1 **16. DEFINITION: KNOWINGLY**

2 AN ACT IS DONE KNOWINGLY IF THE DEFENDANT IS AWARE OF THE ACT
3 AND DOES NOT ACT THROUGH IGNORANCE, MISTAKE, OR ACCIDENT. THE
4 GOVERNMENT IS NOT REQUIRED TO PROVE THAT THE DEFENDANT KNEW THAT
5 HIS ACTS OR OMISSIONS WERE UNLAWFUL. YOU MAY CONSIDER EVIDENCE OF
6 THE DEFENDANT'S WORDS, ACTS, OR OMISSIONS, ALONG WITH ALL THE OTHER
7 EVIDENCE, IN DECIDING WHETHER THE DEFENDANT ACTED KNOWINGLY.

1 **17. CONDUCT OF DELIBERATIONS**

2 WHEN YOU BEGIN YOUR DELIBERATIONS, YOU SHOULD ELECT ONE
3 MEMBER OF THE JURY AS YOUR FOREPERSON. THAT PERSON WILL PRESIDE
4 OVER THE DELIBERATIONS AND SPEAK FOR YOU HERE IN COURT. YOU WILL
5 THEN DISCUSS THE CASE WITH YOUR FELLOW JURORS TO REACH AN
6 AGREEMENT IF YOU CAN DO SO. YOUR VERDICT, WHETHER GUILTY OR NOT
7 GUILTY, MUST BE UNANIMOUS.

8 EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT YOU SHOULD
9 DO SO ONLY AFTER YOU HAVE CONSIDERED ALL OF THE EVIDENCE, DISCUSSED
10 IT FULLY WITH THE OTHER JURORS, AND LISTENED TO THE VIEWS OF YOUR
11 FELLOW JURORS.

12 DO NOT BE AFRAID TO CHANGE YOUR OPINION IF THE DISCUSSION
13 PERSUADES YOU THAT YOU SHOULD, BUT DO NOT COME TO A DECISION SIMPLY
14 BECAUSE OTHER JURORS THINK IT IS RIGHT.

15 IT IS IMPORTANT THAT YOU ATTEMPT TO REACH A UNANIMOUS VERDICT
16 BUT, OF COURSE, ONLY IF EACH OF YOU CAN DO SO AFTER HAVING MADE YOUR
17 OWN CONSCIENTIOUS DECISION. DO NOT CHANGE AN HONEST BELIEF ABOUT
18 THE WEIGHT AND EFFECT OF THE EVIDENCE SIMPLY TO REACH A VERDICT.

1 **18. JUROR NOTES**

2 SOME OF YOU HAVE TAKEN NOTES DURING THE TRIAL. WHETHER OR
3 NOT YOU TOOK NOTES, YOU SHOULD RELY ON YOUR OWN MEMORY OF WHAT
4 WAS SAID. NOTES ARE ONLY TO ASSIST YOUR MEMORY. YOU SHOULD NOT BE
5 OVERLY INFLUENCED BY THE NOTES.

1 **19. PUNISHMENT IRRELEVANT**

2 THE PUNISHMENT PROVIDED BY LAW FOR THIS CRIME IS FOR THE COURT
3 TO DECIDE. YOU MAY NOT CONSIDER PUNISHMENT IN DECIDING WHETHER THE
4 GOVERNMENT HAS PROVED ITS CASE AGAINST THE DEFENDANT BEYOND A
5 REASONABLE DOUBT.

1 **20. BASIS OF VERDICT**

2 YOUR VERDICT MUST BE BASED SOLELY ON THE EVIDENCE AND ON THE
3 LAW AS I HAVE GIVEN IT TO YOU IN THESE INSTRUCTIONS. HOWEVER, NOTHING
4 THAT I HAVE SAID OR DONE IS INTENDED TO SUGGEST WHAT YOUR VERDICT
5 SHOULD BE—THAT IS ENTIRELY FOR YOU TO DECIDE.

1 **21. VERDICT FORM**

2 A VERDICT FORM HAS BEEN PREPARED FOR YOU. AFTER YOU HAVE
3 REACHED A UNANIMOUS AGREEMENT ON A VERDICT, YOUR FOREPERSON WILL
4 FILL IN THE FORM THAT HAS BEEN GIVEN TO YOU, SIGN AND DATE IT, AND
5 ADVISE THE BAILIFF THAT YOU ARE READY TO RETURN TO THE COURTROOM.

1 **22. COMMUNICATION WITH THE COURT**

2 IF IT BECOMES NECESSARY DURING YOUR DELIBERATIONS TO
3 COMMUNICATE WITH ME, YOU MAY SEND A NOTE THROUGH THE BAILIFF,
4 SIGNED BY YOUR FOREPERSON OR BY ONE OR MORE MEMBERS OF THE JURY.
5 NO MEMBER OF THE JURY SHOULD EVER ATTEMPT TO COMMUNICATE WITH ME
6 EXCEPT BY A SIGNED WRITING, AND I WILL RESPOND TO THE JURY CONCERNING
7 THE CASE ONLY IN WRITING, OR HERE IN OPEN COURT. IF YOU SEND OUT A
8 QUESTION, I WILL CONSULT WITH THE LAWYERS BEFORE ANSWERING IT, WHICH
9 MAY TAKE SOME TIME. YOU MAY CONTINUE YOUR DELIBERATIONS WHILE
10 WAITING FOR THE ANSWER TO ANY QUESTION. REMEMBER THAT YOU ARE NOT
11 TO TELL ANYONE—INCLUDING ME—HOW THE JURY STANDS, NUMERICALLY OR
12 OTHERWISE, ON THE QUESTION OF THE GUILT OF THE DEFENDANT, UNTIL AFTER
13 YOU HAVE REACHED A UNANIMOUS VERDICT OR HAVE BEEN DISCHARGED.